IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 536 of 1999.

Reserved on: 30.5.2007.

Date of decision: 15.6.2007.

State of H.P. ... Appellant

Versus

Ram Singh & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. Ravinder Thakur, Advocate.

V.K. Ahuja , J.:

This is an appeal filed by the appellant against the judgment of the Court of learned Judicial Magistrate Ist Class, Bilaspur, dated 13.5.1999, vide which the respondents were acquitted of the charge framed against them under Sections, 323,342,506 read with Section 34 I.P.C.

Briefly stated the facts of the case are that on 11.3.1996, at about 10.00 A.M., when complainant Kala Devi returned after natural call to her house, the respondents were standing there and were trying to demolish/uproot her Danga. She asked the respondents not to uproot the Danga, on which they started giving her beatings with kick and fist

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes..

blows and she became unconscious and she was tied with a tree by a rope at some distance from the place of occurrence. When she regained her consciousness, she found her tied with tree by the rope and the respondents were uprooting and dismantling her Danga. She raised hue and cry and on hearing her noise, PWs Pano Devi and Kallan Devi came there and one Kala Ram also reached there who untied the complainant from the tree. A report was lodged with the police and after investigation, the challan was filed before the learned trial Court who tried the respondents under the above sections resulting in their acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. Ravinder Thakur, Advocate, for respondents No. 1 to 3 and have also gone through the record.

The submissions made by the learned Additional Advocate General were that the offence stands proved from the evidence and the statement of the complainant has been corroborated by other evidence also as well as the fact that her Danga was dismantled on that day and since guilt of the respondents was established beyond reasonable doubt, the findings of the learned trial Court to the contrary are liable to be reversed. On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons given therein supplementing it by the submission that the statement of the Medical Officer does not corroborate the testimony of the complainant and there were villagers present on the spot, but they were not examined and the solitary statement of the complainant was not sufficient to prove the guilt of the respondents. It was also submitted that the findings of the learned

trial Court cannot be said to be perverse calling for an interference by this Court.

Coming to the evidence, PW-1 Kala Devi is the complainant who has stated that the respondents started dismantling her wall and when she prevented them, they started giving her fist blows and also gave threat. Thereafter, she was tied with a tree. She stated that one Kala Ram came there and had untied her. PW-2 Kala Ram named by her has been examined by the prosecution as PW-2, who has stated that when he heard the cries went to the spot, he found the accused persons removing Danga. He untied the rope and the accused also gave him threat and rescued the complainant. He admitted that at the spot there is latrine and room of the accused persons. He has stated about the presence of 10-15 persons from the village at that time and when he saw the Danga being dismantled PW-1 had been tied with a rope. He nowhere stated that she was tied in his presence or that accused persons gave beatings and threat to the complainant in his presence. He admitted that he is facing criminal cases. PW-3 Kaushalya Devi and PW-4 Pano Devi who were examined as eye witnesses have not supported the statement of the complainant. The other villagers who were stated to be present by PW-2 Kala Ram were not examined by the prosecution. PW-6 Dr. S.P. Dhiman, Medical Officer, has stated that the injuries in question are possible by a fall and there were no marks of rope on the person of the complainant. In case she had been tied with a rope with a tree for sometime, there were likelihood of some marks or scratches on the body of the complainant which is not so. He has specifically stated that there was nothing of tying the body of the complainant with a rope or any other such thing. There was tenderness on the left foot but the

complainant has never stated that she was given beatings on her left foot or suffered any injury.

A perusal of the judgment of the learned trial Court shows that the learned trial Court had referred to these contradictions and had not believed the version of the prosecution witnesses, which conclusion drawn by the learned trial Court cannot be said to be perverse calling for an interference by this Court and as such, the appeal filed by the appellant/State of H.P. is liable to be dismissed, which is dismissed accordingly. The bail bonds of the accused persons stand discharged forthwith. A copy of the judgment alongwith record be sent to the Court concerned.

(V.K. Ahuja),
Judge

June 15, 2007
(BSS)